my impression is that he did not really regard him as an accomplice at all. For this reason I do not think the conviction can stand.

The question then arises whether or not I ought to order a retrial. I can find very little authority to guide me on this point in the present case. This is not a case in which the prosecution is asking the appellate Court to cure a defect in their case by having a second attempt to prove it in another trial with the assistance of further evidence. It is true that the Deputy Public Prosecutor suggested that better evidence in the shape of expert evidence on handwriting might be given regarding this receipt, but there is nothing to indicate at the present stage whether such evidence would be favourable to the prosecution or to the defence. Moreover, if it were merely a question of further evidence regarding the signature on this receipt this could be dealt with by further evidence being given on the appeal. I do not think this would resolve the difficulty.

The position appears to me to be that there was the evidence of an accomplice and there was certain other evidence before the Court which may or may not have been accepted and which, if accepted, might have been sufficient corroboration of the evidence of the accomplice. If the learned Magistrate believed the evidence of Prosecution Witnesses 11 and 12 then there was corroboration of the accomplice; if that evidence was not believed then the question remains in doubt. The whole difficulty arises from the learned Magistrate not having gone fully in his Grounds into this question of accomplice evidence and corroboration. In these circumstances I think the interests of justice would be best served by ordering a fresh trial.

Before parting with this case I would remark that I think it somewhat unfortunate that in the circumstances of this case Lu Iu Chun was called as a Crown witness before being himself proceeded against in respect of his part in the affair. Had Lu Iu Chun been charged with receiving or retaining stolen property he would have been convicted or acquitted or discharged, and had this been done such evidence as he then might have given against the accused would not have been tainted to anything like the extent that it was in the proceedings now before me.

For the reasons above given I set aside the conviction and sentence and order that the accused be retried before another Magistrate.

Conviction set aside; retrial ordered.

PUBLIC PROSECUTOR v. M. KARTHIAH.

[A. Cr. J. (Spenser Wilkinson, J.) July 8, 1949]

[K.L. — Criminal Appeal No. 28 of 1949]

Motor Vehicles (Driving Offences) Proclamation, s. 6 — Driving under influence of drink — Disqualification — Special reasons.

The accused had been convicted and fined $100 on his plea of guilty for driving while under the influence of drink under section 6 of the Motor Vehicles (Driving Offences) Proclamation. Sub-section (2) of section 6 provides that a person convicted under the section shall be disqualified for a period not less than 12 months unless special reasons are shown. The learned Magistrate did not suspend the accused's licence for the reason that the accused did not know of any way of earning his livelihood other than driving a motor car.

Held: (1) following **Whittal v. Kirby**(1), this was not a special reason sufficient to excuse the accused from disqualification. A "special reason" is one which is special to the facts which constitute the offence. A circumstance peculiar to the offender as distinguished from the offence is not a "special reason" within the exception; (2) the circumstance peculiar to the offender might have been taken into consideration in imposing fine or imprisonment according to the discretion of the Magistrate, having in mind also the circumstance which the accused will be in consequent on the disqualification; (3) where the Court refuses to disqualify it should state the facts which are found to constitute special reasons.

Cases referred to:—

(1) *Whittal v. Kirby* (1947) 1 K.B. 194; (1946) 2 All E.R. 552.

(2) *R. v. Crossan* (1939) N.I. 106.

(3) *Duck v. Peacock* (1949) 1 All E.R. 318.

(4) *Reay v. Young & anor.* (1949) W.N. 242; (1949) 1 All E.R. 1102.

(5) *R. v. Recorder of Leicester* (1946) 1 All E.R. 615.

CRIMINAL APPEAL.

C. H. Whitton (D.P.P. as he then was) for the Public Prosecutor.

Respondent in person.

Spenser Wilkinson, J. : — This was an appeal by the Public Prosecutor against the decision of the Magistrate in Kuala Lumpur upon the ground that the sentence imposed was inadequate, in that the respondent was not disqualified from holding or obtaining a driving licence for a period of not less than twelve months.

The respondent pleaded guilty to and was convicted of driving a motor car on the public road whilst under the influence of drink under the provisions of section 6 of the Motor Vehicles (Driving Offences) Proclamation. The Magistrate imposed a fine of $100.

It was submitted on behalf of the Public Prosecutor that the Magistrate should have disqualified the

respondent from holding or obtaining a driving licence for a period of not less twelve months in accordance with the provisions of sub-section (2) of section 6 of the Proclamation because there were no "special reasons" within the meaning of that sub-section upon which he could properly refrain from doing so. The sub-section reads as follows :—

"A person convicted of an offence under this section shall, unless the Court for special reasons thinks fit to order otherwise, be disqualified for a period of not less than twelve months from the date of conviction for holding or obtaining a driving licence."

Section 6 of the Proclamation reproduces substantially the provisions of section 28 of the Road Traffic Enactment, 1937, which is the same as section 15 of the Road Traffic Act, 1930. There are some slight differences in wording between the Proclamation and the Act but those differences are not relevant to the question now before me. I have no doubt that the use of the words in sub-section (2) of our section 6 "unless the Court for special reasons think fit to order otherwise" were intended to have the same meaning as the same words used in sub-section (2) of section 15 of the English Act. I am therefore of opinion that the decisions of the Court of Criminal Appeal in England lay down the correct interpretation of these words in our Proclamation.

The leading case on the subject indicating the general principle to be followed with regard to this question of disqualification except for special reasons is the case of *Whittal v. Kirby*[1]. In that case the Lord Chief Justice quoted with approval and adopted a passage from *Rex v. Crossan*[2] which reads as follows :—

"A 'special reason' within the exception is one which is special to the facts of the particular case, that is, special to the facts which constitute the offence. It is, in other words, a mitigating or extenuating circumstance, not amounting in law to a defence to the charge, yet directly connected with the commission of the offence, and one which the court ought properly to take into consideration when imposing punishment. A circumstance peculiar to the offender as distinguished from the offence is not a 'special reason' within the exception."

Whittal v. Kirby[1] was followed in *Duck v. Peacock*[3] where it was laid down that the question whether the facts found constitute special reasons is a question of law. In *Reay v. Young & Anor.*[4] the Court of Criminal Appeal, in dealing with a case under section 35 of the Road Traffic Act, 1930, which deals with driving whilst uninsured, upheld the decision of the justices in not disqualifying the accused on the grounds that she was accompanied by her husband when at the wheel of the car; that the road on which the car was used was in moorland country where there was very little traffic; that the respondent had only driven the car for a few yards and had only held the driving wheel momentarily; and that there was no risk of accident. The case demonstrates the principle above mentioned that "special reasons" must be special to the facts which constitute the offence and affords an example of such special reasons.

The only reason given by the learned Magistrate, in the case now before me, for not suspending the accused's driving licence was that the accused "did not know of any way of earning his livelihood other than driving a motor car", and that being thus deprived of his livelihood he might turn to a dishonest life.

The question of the effect of the sub-section upon professional drivers is expressly dealt with in the judgment of the Court of Criminal Appeal in *Whittal v. Kirby*[1] in the following passage :—

"It is to be observed that the sections are mandatory and that Parliament has provided that a period of disqualification shall be imposed . . . . but they have given a discretion to the court which obviously is a limited discretion to be exercised only for special reasons. The limited discretion must be exercised judicially. The reasons inducing the court to exercise it must be special, and special is the antithesis of general. The fact that a man is a first offender or that he has committed no motoring offence for many years are reasons of the most general character that can well be imagined . . . . That a man is a professional driver cannot, as it seems to me, by any possibility be called a special reason. The fact that drivers are professional drivers would of itself indicate that they are more likely to be habitually on the roads than people who drive themselves, so there is all the more reason for protecting the public against them. By exercising discretion in favour of an offender because he is a professional driver . . . . it is obvious that the court is taking into account the fact that in such cases disqualification is likely to work greater financial hardship than in the case of a person who uses his car for social or casual purposes. There is no indication in the Act that Parliament meant to draw any distinction between drivers who earn their living by driving . . . . and any other users of motor cars . . . . Had Parliament intended that special consideration was to be shown to professional drivers or first offenders it would have so provided."

Upon the subject of special reasons I respectfully agree with and adopt the following passage from the same judgment (a passage dealing with sections 15 and 35 of the Road Traffic Act, 1930) as applicable to section 6 of the Motor Vehicles (Driving Offences) Proclamation and Regulation 3 of the Motor Vehicles Third Party Risks Regulations :—

"In my opinion magistrates . . . . must take it to be the law that no considerations of financial hardship or of the offender being before the court for the first time, or that he has driven for a great number of years without complaint, can be regarded as a special reason within these sections."

Before leaving this aspect of the case I desire to draw attention to the case of *R. v. Recorder of Leicester*[5] where it is laid down that where any court refrains from imposing a disqualification or a conviction which carries the penalty of disqualification from holding or obtaining a licence that court should state the

facts which are found to constitute special reasons entitling the court to refrain from imposing disqualification. In the case now before me this has been done but I mention this decision because, in my opinion, it is of importance that it should be generally known and applied.

The Deputy Public Prosecutor who argued the appeal before me agreed that, had the Magistrate in this case realised that he was bound in law to disqualify the respondent, he might have imposed a lesser penalty. In *Whittal v. Kirby*[1] it is said :—

> "The Act has left the penalty whether of fine or imprisonment entirely in the court's discretion. It is, therefore, open to them, if they see fit, to mitigate the penalty because disqualification will follow."

I think it is more than probable, therefore, that had the Magistrate correctly interpreted the law he might either have dealt with the respondent as a first offender under section 294 of the Criminal Procedure Code or have imposed a nominal fine because of the disqualification which would follow. He mentioned the following mitigating circumstances which he had taken into account in fixing the fine :—

(i) Accused is a poor man earning $65 per month.

(ii) No accident occurred and no injury was caused to any one.

(iii) As a result of the commission of this offence, accused had been dismissed from the service by his employer.

(iv) Accused is a first offender.

For these reasons I reduced the fine to a nominal one and imposed upon the respondent disqualification from holding or obtaining a driving licence for twelve months from the date of conviction.

I had a further reason for making a substantial reduction in the fine in that this is the first case of its kind, as far as I am aware, that has arisen since the liberation although the law was the same under section 28 of the Road Traffic Enactment, 1937. Professional drivers will, however, have to realise that an offence against this section will, in most cases, result in their being disqualified from driving for at least a year in addition to their being liable to a fine or to a term of imprisonment, which, for a first offence may extend to six months. The nominal fine imposed in the present case is not intended to be any indication as to the proper penalty to be imposed upon future offenders.

Order accordingly.

PUBLIC PROSECUTOR v. MOHAMED JEE.

[A. Cr. J. (Briggs, J.) December 16, 1952]

[K.L. — Criminal Appeal No. 64 of 1952]

Motor Vehicles Third Party Risks Regulations, Reg. 3(1) and (2) — Driving without 3rd Party Insurance — Disqualification — Special reasons.

The accused had been convicted for driving without 3rd party insurance. The learned Magistrate did not disqualify the accused from holding a driving licence and it was not clear why he did not do so. The Public Prosecutor appealed against the inadequacy of the sentence as provided in Reg. 3(2) of the Motor Vehicles Third Party Risks Regulations which makes it obligatory to disqualify the accused unless for "special reasons" the Court thinks fit to order otherwise.

Held: (1) following **Public Prosecutor v. M. Karthiah**[1], the fact that hardship will result if the licence of the particular driver is suspended is not a special reason. "Special reason" must pertain to the offence itself and not to the offender; (2) the facts relied upon as special reasons must, unless admitted, be proved by evidence, and also that the special reasons must be fully and clearly stated by the Court on deciding not to disqualify; (3) as regards the fine imposed, it is open to the Magistrate to consider the hardship caused by the disqualification when he assesses the amount of the fine.

Case referred to :—

(1) *Public Prosecutor v. M. Karthiah* p. 52 *ante.*

CRIMINAL APPEAL from the Magistrates' Court at Kuala Lumpur.

G. H. Summerfield (D.P.P.) for the appellant.

Respondent in person.

Briggs, J. (delivering oral judgment said) : — This is an appeal by the Public Prosecutor against inadequacy of sentence on convictions for using motor vehicles without proper third party insurance. Regulation 3(1) of the Motor Vehicles Third Party Risks Regulations, Gazette Notification No. 452 of 30th March, 1946, makes it an offence not to have adequate third party insurance, and Regulation 3(2) of the same Regulations makes obligatory, as part of the penalty for such an offence, disqualification from holding or obtaining a driving licence for a period of twelve months at least, unless the Court "for special reasons" thinks fit to order otherwise. In this case the learned Magistrate decided not to order disqualification, but it is not clear from the Grounds of Judgment why he did not do so. It may be that he was unaware of the provision in question; but it seems more probable that he thought the fine a sufficient punishment and did not order disqualification for that reason. A long line of English authorities, which I need not trouble now to detail, show that in these circumstances the 'special reasons' must pertain to the offence itself, and not to the offender. It is, for example, not a special reason that particular and grave hardship will result if the licence of the particular